

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 497 CUTTACK, TUESDAY, APRIL 4, 2006 / CHAITRA 14, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th March 2006

No. 2588—li/1(BH)-71/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th February 2006 in Industrial Dispute Case No. 281 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of the Managing Director, M/s Polar Latex Ltd., Somanathpur, Balasore and its Workman Shri Ramakanta Sethi, At/P. O. Somnathpur, Dist. Balasore was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 281 OF 1995

Dated the 28th February 2006

Present :

Shri P. K. Sahoo, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between : The Managing Director, . . First Party—Management
 M/s Polar Latex Ltd.,
 Somanathpur, Balasore.

And

Shri Ramakanta Sethi, . . Second Party—Workman
At/Post Somanathpur, Dist. Balasore.

Appearances :

For the First Party—Management . . Shri B. K. Mohanty

For the Second Party—Workman himself . . Shri R. Sethi

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 11346(6)-L.E., dated the 25th August 1995 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :

“Whether the action of the management of M/s Polar Latex Ltd., Somanathpur, Balasore in terminating the services of Shri Ramakanta Sethi, a trainee workman with effect from the 12th November 1993 is legal and/or justified ? If not, what relief he is entitled to ?”

3. Workman Shri Ramakanta Sethi by way of this reference has challenged the legality and justifiability of the action of the management of M/s Polar Latex Ltd., Somanathpur, Balasore (in short the management) in terminating his services with effect from the 12th November 1993.

Matrix of the necessary facts as bear on the controversy involved in the present reference is that the workman after being selected by the Selection Board of the management was appointed as trainee workman with effect from the 14th March 1991. While performing his duty as trainee ‘B’ he was placed under suspension with effect from the 23rd November 1991. Thereafter charge-sheet came to be issued against him on the 29th November 1991 on the allegation of obstructing the willing workers, staff and officers from attending their duties on the 20th November 1991 and the 21st November 1991 respectively and pending of certain criminal cases. Accordingly he submitted his explanation denying the charges levelled against him. But the management being not satisfied with the explanation decided to conduct domestic enquiry and in this regard appointed an Enquiring Officer who conducted the domestic enquiry into the allegations levelled against him. According to the workman, the domestic enquiry conducted by the management was not fair and proper and he was not afforded any adequate and reasonable opportunity to properly defend his case in the enquiry. While conducting the domestic enquiry the management had not followed the principles of natural justice and terminated his services with effect from the 12th November 1993 which was according to him illegal, unjust and arbitrary. Thereafter he approached the labour machinery but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Balasore ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has claimed for his reinstatement in service with full back wages. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the workman *inter alia* contended that the workman was appointed as Trainee ‘B’ in the establishment of the management with effect from the 14th March 1991 for a period of one

year. The conditions of appointment were offered in writing to the workman who accepted the same under his signature. It is averred in the written statement that on the 20th November 1991 there was a strike in the industry of the management and the workman was physically obstructed the willing workers from attending the duties. He was also involved in assaulting, intimidating and abusing the co-workers during the strike for which F. I. R. was lodged at Remuna Police Station. Thereafter the management placed the workman under suspension with effect from the 23rd November 1991. A charge-sheet came to be issued against him on the allegation of obstructing the willing workers from attending their duties, assaulting, intimidating and abusing the co-workers during the strike. Thereafter the management conducted a domestic enquiry and in this regard appointed an Enquiring Officer to conduct the domestic enquiry into the allegations levelled against the workman. The Enquiring Officer after completion of the enquiry submitted his report and after careful consideration of the enquiry report and other relevant documents submitted by the Enquiring Officer terminated him from service with effect from the 12th November 1993. The workman was given an opportunity of personal hearing before final order was passed by the management. It is categorically averred that the workman during his training period indulged himself in such activities which was highly unbecoming on the part of a trainee. Considering the gravity of misconduct the management was constrained to terminate the traineeship of the workman with effect from the 12th November 1993. According to the management, during enquiry all possible reasonable opportunities were offered to the workman to properly defend his case in the enquiry. The principles of natural justice were followed by the management during the enquiry. The enquiry conducted by the management was fair and proper. During enquiry all the charges were proved and established and the workman was found guilty of the charges levelled against him. After careful consideration of the gravity of misconduct, the management keeping in view the norms of the appointment letter was constrained to terminate the services of the workman with effect from the 12th November 1993. According to the management the action taken by it in terminating the services of the workman with effect from the 12th November 1993 was legal and justified and therefore, he is not entitled for any relief. On the above back grounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

(i) “Whether the action of the management of M/s Polar Latex Ltd., Somanathpur, Balasore in terminating the services of Shri Ramakanta Sethi, a trainee workman with effect from the 12th November 1993 is legal and/or justified ?

(ii) If not, to what relief he is entitled ?”

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as, suspension order, charge report, appeal

against the order of termination, explanation regarding the charge-sheet and enquiry report marked as Exts. 1 to 5 respectively. On the other hand, the management has examined two witnesses namely Shri Rai Mohan Patnaik and Shri Surendra Swain as M. Ws. 1 and 2 and has relied upon the copy of the appointment letter, enquiry report, statement of the witnesses during enquiry and application of the workman, dated the 21st May 1993 expressing his intention not to examine any further witness during enquiry marked as Exts. A to E respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The workman in his evidence has clearly stated that he joined in the establishment of the management in the year 1991 but he was placed under suspension with effect from the 23rd November 1991. A domestic enquiry was conducted by the management against him relating to the charges levelled against him and Shri Rai Mohan Patnaik was appointed as Enquiring Officer. He admits in his evidence that he participated in the enquiry and cross-examined the witnesses. The copy of the enquiry report was also given to him. During evidence he has proved the suspension order, the charges levelled against him, appeal against the order of termination, explanation to the charges and the enquiry report marked as Exts. 1 to 5 respectively. During cross-examination he was also proved the appointment letter vide Ext. A. He has categorically stated that during the period of suspension he was paid the subsistence allowance. The management, on the other hand, has examined the Enquiring Officer, Shri Rai Mohan Patnaik as M. W. 1 in the present case. It appears from the evidence of M. W. 1 that he was appointed as Enquiring Officer by the management for conducting the domestic enquiry into the charges framed against the workman. He has categorically stated that the workman participated in the enquiry, cross-examined the witnesses and examined himself during the enquiry. It is also in his evidence that all reasonable opportunities were afforded to the workman to properly defend his case during enquiry. After completion of enquiry he submitted the enquiry report vide Ext. B. During enquiry he examined four witnesses on behalf of the management and the statements of the witnesses recorded by him have been duly proved and marked as Exts. C to C/3. The evidence of the workman and the memo filed by him have also been exhibited in the case marked as Exts. D and E respectively. During cross-examination it has been elicited by the workman that the criminal cases pending against him have not been mentioned in the charge-sheet in respect of charge No. 1. The names of the willing workers have also not been reflected in the charge-sheet in respect of charge Nos. 2 and 3. It has also further been elicited that he has not mentioned in his enquiry report Ext. B that the delinquent workman had never been punished by any Court in any case for the offences as reflected in charge No. 1 of the charge-sheet. It further appears from the cross-examination of M. W. 1 that the enquiry does not reveal the case number of the criminal cases and he had not ascertained during enquiry if the management had lodged any F. I. R.

relating to the incident that occurred outside the factory gate on the 20th November 1991 and the 21st November 1991. He admits during cross-examination that the management had not produced any document with regard to the involvement of the workman in the above incidents that took place outside the factory gate on the 20th November and 21st November 1991. He has categorically stated that the workman had conducted his own case during enquiry and he had nowhere prayed to allow him to participate in the enquiry though a co-worker. It has been suggested to him that the enquiry conducted by him was not fair and proper and that no reasonable opportunity had been given to the workman to properly defend his case and that he had submitted the enquiry report as per the instruction of the management to which he has replied in the negative. One Shri Surendra Swain already examined as M. W. 2 on behalf of the management has stated that on the 21st November 1991 at about 6 A. M. while he was entering into the factory premises some body pulled his cycle from the back near the gate and when he turned back he saw the workman along with two others. They all assaulted him. They also physically obstructed him from attending his duty. The workman along with 20 to 25 other employees were demonstrating Dharana in front of the factory gate. He informed the incident to the management and got himself medically examined. Due to injury on his person he could not be able to attend his duty on that day. M. W. 2 has not been cross-examination by the workman. Therefore, the evidence given by M. W. 2 remains unchallenged.

8. It is strenuously urged on behalf of the management that the workman was appointed as trainee with effect from the 14th March 1991 and the period of training was for one year. The conditions of appointment were offered in writing to the workman who accepted the same and accordingly joined in the establishment of the management as trainee but the traineeship was terminated due to his unsatisfactory performance during the training period of one year. The learned representative of the management has urged that the workman during his training period indulged himself in such activities which were considered to be highly unbecoming on the part of a trainee. After 8 months of his training his conduct was found to be highly unsatisfactory. The workman was charge-sheeted on the allegation of physically obstructing the willing workers, assaulting, intimidating and abusing the co-workers during strike in the industry on the 20th November 1991 and the 21st November 1991. Accordingly the management decided to conduct a domestic enquiry and infact the workman was found guilty of the charges levelled against him. It is further contended by the learned representative of the management that in the appointment letter it has been clearly mentioned that if the management is not satisfied with the work or conduct of the trainee, the management shall have the right to terminate the traineeship without any notice. In clause-6 of the appointment letter it has been clearly mentioned that completion of the traineeship does not entitle the trainee for being considered for employment in the company. However, if the performance and conduct of the trainee are found to be satisfactory and suitable vacancy exists at the time of completion of the training period, the case of the trainee may be considered for absorption in the company. In the present case, the conduct of the workman during his training period was found to be highly unsatisfactory and therefore, the management was

constrained to terminate the traineeship of the workman which was just, proper and legal. On the above submission the learned representative of the management has fairly submitted that the termination of traineeship of the workman is legal and justified and the management is not legally under obligation to absorb the workman as per the terms stipulated in clause-6 of the appointment letter and therefore, the workman is not entitled for any relief. On other hand, the stand taken by the workman is that the action of the management in terminating his services during his training period was illegal and unjustified and he is entitled to be reinstated in service with back wages. In support of their respective cases both the management and the workman have adduced evidence. The management has relied upon several documents such as appointment letter, enquiry report, statement of the witnesses during enquiry including the statement of the workman and the letter intimating the Enquiring Officer not to adduce any further witness from his side during the enquiry which have already been marked as Ext. A to E respectively. Similarly the workman has also relied upon the documents such as, suspension order, charge report, appeal against the order of termination, his explanation to the charges and the enquiry report marked as Exts. 1 to 5 respectively. The evidence already tendered by the parties clearly reveals that the workman was appointed as trainee with effect from the 14th March 1991 but during the training period the performance of the workman was found not satisfactory which resulted in initiating a domestic enquiry through an independent Enquiring Officer who after completion of enquiry submitted his report holding the workman guilty of the charges levelled against him. The workman indulged himself in such activities which were considered by the management to be unsatisfactory conduct on the part of a trainee. The workman was placed under suspension and the act of misconduct was duly proved during the enquiry and he was found guilty of the charges levelled against him which clearly leads me to arrive at an irresistible conclusion that the workman had violated the terms and conditions of the appointment letter stipulated in Ext. A. The order of appointment vide Ext. A itself clearly sets out the terms thereafter which makes it clear that the facility of providing training to the workman could be put to an end to at any time without any notice. Completion of traineeship would not entitled the workman for being considered for employment in the company but if his performance and conduct during the traineeship was found to be satisfactory and suitable vacancy was existed at the time of completion of training then his case could be considered for absorption in the company's roll in a suitable grade and designation. In the case at hand, the workman admits during his evidence that during the training period he was placed under suspension and domestic enquiry was conducted against him. He participated in the enquiry and after completion of the enquiry he was given the copy of the enquiry report. The perusal of the enquiry report Ext. 5 clearly emerges that all the charges levelled against him were duly proved and he was found guilty of all the charges. The evidence given by the workman in this respect also gets support from the evidence already adduced by the management. After carefully examining the evidence led by the parties it is crystal clear that the workman during the training period indulged himself in such activities which were considered by the management to be unsatisfactory conduct on the part of a trainee. The act of misconduct had also duly been proved during the enquiry and the workman

was found guilty of the charges levelled against him. However it has been proved and established that the performance of the workman during traineeship was satisfactory and that he had completed the training period under the management successfully and satisfactorily as per the terms and conditions stipulated in the appointment letter vide Ext. A. On the whole, there is substance in the stand taken by the management. On the other hand, the assertion of the workman to the effect that the action of the management in terminating his services with effect from the 12th November 1993 was illegal and unjustified is without substance. From the above discussion I am led to hold that the action of the management in terminating the services of the workman with effect from the 12th November 1993 was legal and justified. In that view of the matter, the workman is not entitled for any relief. Both the above issues are answered accordingly.

9. Hence it is ordered.

ORDER

That the action of the management of M/s Polar Latex Ltd., Somanathpur, Balasore in terminating the services of Shri Ramakanta Sethi, a trainee workman with effect from the 12th November 1993 is legal and justified. In such premises the workman is not entitled to get any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
28-2-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
28-2-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government